

*(d) Notwithstanding any other provision of this section, a person who is found to be in violation of this section for the first time shall be subject only to injunctive relief or other appropriate order requiring the person to cease and desist from such violation, and not to any other penalty or sanction.*

SECTION 5. Section 4.01, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding Subsection (e) to read as follows:

*(e) For the purposes of this section, and notwithstanding Section 5.08, Medical Practices Act (Article 4495b, Vernon's Texas Civil Statutes), or any other law, a request for the medical records of a deceased person or a person who is incompetent shall be deemed to be valid if accompanied by an authorization signed by a parent, spouse, or adult child of the deceased or incompetent person.*

SECTION 6. Section 161.032, Health and Safety Code, is amended to read as follows:

Sec. 161.032. RECORDS AND PROCEEDINGS CONFIDENTIAL. (a) The records and proceedings of a medical committee are confidential and are not subject to court subpoena.

(b) The records and proceedings may be used by the committee and the committee members only in the exercise of proper committee functions.

(c) This section and Section 5.06, Medical Practices Act (Article 4495b, Vernon's Texas Civil Statutes), do ~~does~~ not apply to records made or maintained in the regular course of business by a hospital, health maintenance organization, *medical organization, university medical center or health science center*, or extended care facility.

SECTION 7. This Act takes effect immediately except that Sections 3, 4, 5, and 6 take effect on September 1, 1993.

SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

Passed the Senate on May 18, 1993: Yeas 31, Nays 0; passed the House on May 25, 1993: Yeas 134, Nays 0, two present not voting.

Approved June 10, 1993.

Effective June 10, 1993, except §§ 3 to 6 effective Sept. 1, 1993.

## CHAPTER 626

### S.B. No. 1477

#### AN ACT

relating to the creation, administration, powers, duties, operation, and financing of the Edwards Aquifer Authority and the management of the Edwards Aquifer; granting the power of eminent domain; authorizing the issuance of bonds; providing civil and administrative penalties; and validating the creation of the Uvalde County Underground Water Conservation District.

*Be it enacted by the Legislature of the State of Texas:*

#### ARTICLE 1

SECTION 1.01. FINDINGS AND DECLARATION OF POLICY. The legislature finds that the Edwards Aquifer is a unique and complex hydrological system, with diverse economic and social interests dependent on the aquifer for water supply. In keeping with that finding, the Edwards Aquifer is declared to be a distinctive natural resource in this state, a unique aquifer, and not an underground stream. To sustain these diverse interests and that natural resource, a special regional management district is required for the effective control of the resource to protect terrestrial and aquatic life, domestic and municipal water supplies, the

operation of existing industries, and the economic development of the state. Use of water in the district for beneficial purposes requires that all reasonable measures be taken to be conservative in water use.

**SECTION 1.02. CREATION.** (a) A conservation and reclamation district, to be known as the Edwards Aquifer Authority, is created in all or part of Atascosa, Bexar, Caldwell, Comal, Guadalupe, Hays, Medina, and Uvalde counties. A confirmation election is not necessary. The authority is a governmental agency and a body politic and corporate.

(b) The authority is created under and is essential to accomplish the purposes of Article XVI, Section 59, of the Texas Constitution.

**SECTION 1.03. DEFINITIONS.** In this article:

(1) "Aquifer" means the Edwards Aquifer, which is that portion of an arcuate belt of porous, water-bearing, predominately carbonate rocks known as the Edwards and Associated Limestones in the Balcones Fault Zone extending from west to east to northeast from the hydrologic division near Brackettville in Kinney County that separates underground flow toward the Comal Springs and San Marcos Springs from underground flow to the Rio Grande Basin, through Uvalde, Medina, Atascosa, Bexar, Guadalupe, and Comal counties, and in Hays County south of the hydrologic division near Kyle that separates flow toward the San Marcos River from flow to the Colorado River Basin.

(2) "Augmentation" means an act or process to increase the amount of water available for use or springflow.

(3) "Authority" means the Edwards Aquifer Authority.

(4) "Beneficial use" means the use of the amount of water that is economically necessary for a purpose authorized by law, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose.

(5) "Board" means the board of directors of the authority.

(6) "Commission" means the Texas Natural Resource Conservation Commission.

(7) "Conservation" means any measure that would sustain or enhance water supply.

(8) "Diversion" means the removal of state water from a watercourse or impoundment.

(9) "Domestic or livestock use" means use of water for:

(A) drinking, washing, or culinary purposes;

(B) irrigation of a family garden or orchard the produce of which is for household consumption only; or

(C) watering of animals.

(10) "Existing user" means a person who has withdrawn and beneficially used underground water from the aquifer on or before June 1, 1993.

(11) "Industrial use" means the use of water for or in connection with commercial or industrial activities, including manufacturing, bottling, brewing, food processing, scientific research and technology, recycling, production of concrete, asphalt, and cement, commercial uses of water for tourism, entertainment, and hotel or motel lodging, generation of power other than hydroelectric, and other business activities.

(12) "Irrigation use" means the use of water for the irrigation of pastures and commercial crops, including orchards.

(13) "Livestock" means animals, beasts, or poultry collected or raised for pleasure, recreational use, or commercial use.

(14) "Municipal use" means the use of water within or outside of a municipality and its environs whether supplied by a person, privately owned utility, political subdivision, or other entity, including the use of treated effluent for certain purposes specified as follows. The term includes:

(A) the use of water for domestic use, the watering of lawns and family gardens, fighting fires, sprinkling streets, flushing sewers and drains, water parks and parkways, and recreation, including public and private swimming pools;

(B) the use of water in industrial and commercial enterprises supplied by a municipal distribution system without special construction to meet its demands; and

(C) the application of treated effluent on land under a permit issued under Chapter 26, Water Code, if:

(i) the primary purpose of the application is the treatment or necessary disposal of the effluent;

(ii) the application site is a park, parkway, golf course, or other landscaped area within the authority's boundaries; or

(iii) the effluent applied to the site is generated within an area for which the commission has adopted a rule that prohibits the discharge of the effluent.

(15) "Order" means any written directive carrying out the powers and duties of the authority under this article.

(16) "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

(17) "Pollution" means the alteration of the physical, thermal, chemical, or biological quality of any water in the state, or the contamination of any water in the state, that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, property, or public health, safety, or welfare or that impairs the usefulness of the public enjoyment of the water for any lawful or reasonable purpose.

(18) "Recharge" means increasing the supply of water to the aquifer by naturally occurring channels or artificial means.

(19) "Reuse" means authorized use for one or more beneficial purposes of use of water that remains unconsumed after the water is used for the original purpose of use and before the water is discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water.

(20) "Underground water" has the meaning assigned by Section 52.001, Water Code.

(21) "Waste" means:

(A) withdrawal of underground water from the aquifer at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic, or stock raising purposes;

(B) the flowing or producing of wells from the aquifer if the water produced is not used for a beneficial purpose;

(C) escape of underground water from the aquifer to any other reservoir that does not contain underground water;

(D) pollution or harmful alteration of underground water in the aquifer by salt water or other deleterious matter admitted from another stratum or from the surface of the ground;

(E) wilfully or negligently causing, suffering, or permitting underground water from the aquifer to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or order issued by the commission under Chapter 26, Water Code;

(F) underground water pumped from the aquifer for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge; or

(G) for water produced from an artesian well, "waste" has the meaning assigned by Section 11.205, Water Code.

(22) "Well" means a bored, drilled, or driven shaft or an artificial opening in the ground made by digging, jetting, or some other method where the depth of the shaft or opening is greater than its largest surface dimension, but does not include a surface pit, surface excavation, or natural depression.

(23) "Well J-17" means state well number AY-68-37-203 located in Bexar County.

(24) "Well J-27" means state well number YP-69-50-302 located in Uvalde County.

(25) "Withdrawal" means an act or a failure to act that results in taking water from the aquifer by or through man-made facilities, including pumping, withdrawing, or diverting underground water.

SECTION 1.04. BOUNDARIES. The authority includes the territory contained within the following area:

(1) all of the areas of Bexar, Medina, and Uvalde counties;

(2) all of the area of Comal County, except that portion of the county that lies North of the North line through the county of Subdivision No. 1 of the Underground Water Reservoir in the Edwards Limestone, Balcones escarpment area, as defined by the order of the Board of Water Engineers dated January 10, 1957;

(3) the part of Caldwell County beginning with the intersection of Hays County Road 266 and the San Marcos River;

THENCE southeast along the San Marcos River to the point of intersection of Caldwell, Guadalupe, and Gonzales counties;

THENCE southeast along the Caldwell-Gonzales County line to its intersection with U.S. Highway 183;

THENCE north along U.S. Highway 183 to its intersection with State Highway 21;

THENCE southwest along State Highway 21 to its intersection with Hays County Road 266;

THENCE southwest along Hays County Road 266 to the place of beginning;

(4) the part of Hays County beginning on the northwest line of the R. B. Moore Survey, Abstract 412, in Comal County where it crosses the Comal County-Hays County line northeast along the northwest line of said Survey to the northeast corner of said Survey in Hays County, Texas;

THENCE southeast in Hays County, Texas across the Jas. Deloach Survey, Abstract 878, to the most westerly northwest corner of the Presidio Irrigation Co. Survey, Abstract 583;

THENCE northeast along the northwest line of said Survey to its most northerly northwest corner;

THENCE continuing in the same line across the R.S. Clayton Survey 2, Block 742, to the west line of the H. & G. N. RR. Co. Survey 1, Abstract 668;

THENCE north along the west line of said Survey to its northwest corner;

THENCE east along the north line of said Survey to its northeast corner;

THENCE northeast across the David Wilson Survey 83, Abstract 476, to the southeast corner of the F. W. Robertson Survey 71, Abstract 385;

THENCE north along the east line of said Survey to the southwest corner of the Benjamin Weed Survey 72, Abstract 483;

THENCE east along the south line of said Survey to its southeast corner;

THENCE northeast across the William Gray Survey 73, Abstract 92, and the Murray Bailey Survey 75, Abstract 42, to the southwest corner of the D. Holderman Survey 33, Abstract 225;

THENCE north along the west line of said Survey to its northwest corner;

THENCE continuing in the same line to the north line of the Day Land & Cattle Co. Survey 672;

THENCE west along said north line of said Survey to its northwest corner, which is in the east line of the Jesse Williams Survey 4 to the northeast corner of said Survey;

THENCE west along the north line of said Survey to the Southwest corner of the Amos Singleton Survey 106, Abstract 410;

THENCE north along the west lines of said Amos Singleton Survey 106 and the Watkins Nobles Survey 107, Abstract 346, to the northwest corner of said Watkins Nobles Survey 107;

THENCE east along the north line of said Survey to the southwest corner of the Jesusa Perez Survey 14, Abstract 363;

THENCE north along the west line of said Jesusa Perez Survey 14 to its northwest corner;

THENCE east along the north line of said Survey to its northeast corner;

THENCE, south along the east line of said Survey for a distance of approximately 10,000 feet to its intersection with Ranch Road 150;

THENCE, east by southeast along Ranch Road 150 approximately 24,500 feet to its intersection with the southern boundary line of the Andrew Dunn Survey 9, Abstract 4;

THENCE, east along the south line of said survey as it extends and becomes the southern boundary line of the Morton M. McCarver Survey 4, Abstract 10, for a distance of approximately 7,000 feet to its intersection with Ranch Road 2770;

THENCE, south on Ranch Road 2770 for a distance of approximately 400 feet to its intersection with Farm-to-Market Road 171;

THENCE, east along Farm-to-Market Road 171 for a distance of approximately 10,500 feet to its intersection with Farm-to-Market Road 25;

THENCE, north by northeast along Farm-to-Market Road 25 for a distance of approximately 3,100 feet to its intersection with Farm-to-Market Road 131;

THENCE, east by southeast along Farm-to-Market Road 131 for a distance of approximately 3,000 feet to its intersection with the east line of the Thomas G. Allen Survey, Abstract 26;

THENCE south along the east line of said Thomas G. Allen Survey to the most northerly northwest corner of the Elisha Pruett Survey 23, Abstract 376;

THENCE southwest along a west line of said Elisha Pruett Survey 23 to the west corner of said Survey;

THENCE southeast along the southwest line of said Survey to the north corner of the John Stewart Survey, Abstract 14;

THENCE southwest along the northwest line of said John Stewart Survey to its west corner;

THENCE continuing in the same line to the most northerly southwest line of the John Jones Survey, Abstract 263;

THENCE southeast along said southwest line to an interior corner of said John Jones Survey;

THENCE southwest along the most southerly northwest line of said Survey to the southwest corner of said Survey;

THENCE southeast along the south line of said Survey to the north corner of the James W. Williams Survey 11, Abstract 473;

THENCE southwest along the northwest line of said James W. Williams Survey 11 to its west corner;

THENCE southeast along the southwest line of said Survey to the north right-of-way line of the I. & G. N. RR.;

THENCE southwest along said right-of-way of said I. & G. N. RR. to the Hays County-Comal County line;

THENCE south along said county line to the northwest line of the R. B. Moore Survey, Abstract 412, in Hays County where it crosses the Hays County-Comal County line;

(5) all of the territory of Hays County contained within the following described area:

Beginning on the most southern point of Hays County at the intersection of Hays, Comal, and Guadalupe Counties; then continuing in a northeasterly direction along the Hays-Guadalupe county line to its intersection with the Hays-Caldwell county line; then continuing along the Hays-Caldwell county line to an intersection with Farm-to-Market Road 150; then continuing in a northwesterly direction along Farm-to-Market Road 150 to the intersection with the existing southern boundary of the part of Hays County described in Subdivision (4) of this section; then continuing in a southwesterly direction along the existing southern

boundary of the part of Hays County described in Subdivision (4) of this section to the intersection with the Hays-Comal county line; then continuing in a southerly direction along the Hays-Comal county line to the point of beginning;

(6) the part of Guadalupe County beginning at the Guadalupe County-Caldwell County-Hays County line at the San Marcos River in the northeast corner of Guadalupe County, Texas.

THENCE southwest along the Guadalupe County-Hays County line to the intersect of the Guadalupe County-Hays County-Comal County line.

THENCE southwest along the Guadalupe County-Comal County line to the intersect of the Guadalupe County-Comal County-Bexar County intersect at the Cibolo creek.

THENCE south along the Guadalupe County-Bexar County line along the Cibolo creek to the intersect of the Guadalupe County-Bexar County-Wilson County line.

THENCE south along the Guadalupe County-Wilson County line along the Cibolo creek to the intersect and crossing of Guadalupe County Road 417.

THENCE east along Guadalupe County Road 417 to the intersect of Guadalupe County Road 417 and Guadalupe County Road 412.

THENCE northeast along Guadalupe County Road 412 to the intersect of Guadalupe County Road 412 and Guadalupe County Road 411 A.

THENCE east along Guadalupe County Road 411 A to the intersect of Guadalupe County Road 411 A and Farm-to-Market road number 725.

THENCE north along Farm-to-Market Road 725 to the intersect of Farm-to-Market Road 725 and Interstate Highway 10.

THENCE east along Interstate Highway 10 to the intersect of Interstate Highway 10 and State Highway 90.

THENCE east along State Highway 90 to the Guadalupe County-Caldwell County line at the San Marcos river.

THENCE northwest along the Guadalupe County-Caldwell County line along the San Marcos river to the place of beginning; and

(7) the part of Atascosa County beginning on the north line of the Robt. C. Rogers Survey, at the Bexar County-Atascosa County line, to its northwest corner, which is the northeast corner of the F. Brockinzen Survey, Abstract 86;

THENCE south along the east line of said Survey passing through its southeast corner and continuing south along the east line of the F. Brockinzen Survey, Abstract 90, to its southeast corner;

THENCE west along the south line of said survey to its southwest corner;

THENCE north along the west line of said F. Brockinzen Survey to the southeast corner of the B. Bonngartner Survey, Abstract 87;

THENCE west along the south line of said B. Bonngartner Survey passing through its southwest corner and continuing along the south line of the J. B. Goettlemann Survey, Abstract 309, to the Atascosa County-Medina County line;

THENCE north along the Atascosa County-Medina County line to the Bexar County line;

THENCE east along the Atascosa County-Bexar County Line to the place of beginning.

**SECTION 1.05. FINDINGS RELATING TO BOUNDARIES.** The legislature finds that the boundaries and field notes of the authority form a closure. A mistake in the field notes or in copying the field notes in the legislative process does not affect the organization, existence, or validity of the district or the legality or operation of the district or its governing body.

**SECTION 1.06. FINDING OF BENEFIT.** (a) The legislature finds that the water in the unique underground system of water-bearing formations known as the Edwards-Balcones Fault Zone Aquifer has a hydrologic interrelationship to the Guadalupe, San Antonio, San Marcos, Comal, Frio, and Nueces river basins, is the primary source of water for the residents of the region, and is vital to the general economy and welfare of this state. The legislature finds that it is necessary, appropriate, and a benefit to the welfare of this state to

provide for the management of the aquifer through the application of management mechanisms consistent with our legal system and appropriate to the aquifer system.

(b) The legislature further finds that the state will be benefitted by exercise of the powers of the authority and by the works and projects that are to be accomplished by the authority under powers conferred by Article XVI, Section 59, of the Texas Constitution. The authority is created to serve a public use and benefit.

**SECTION 1.07. OWNERSHIP OF UNDERGROUND WATER.** The ownership and rights of the owner of the land and the owner's lessees and assigns, including holders of recorded liens or other security interests in the land, in underground water and the contract rights of any person who purchases water for the provision of potable water to the public or for the resale of potable water to the public for any use are recognized. However, action taken pursuant to this Act may not be construed as depriving or divesting the owner or the owner's lessees and assigns, including holders of recorded liens or other security interests in the land, of these ownership rights or as impairing the contract rights of any person who purchases water for the provision of potable water to the public or for the resale of potable water to the public for any use, subject to the rules adopted by the authority or a district exercising the powers provided by Chapter 52, Water Code. The legislature intends that just compensation be paid if implementation of this article causes a taking of private property or the impairment of a contract in contravention of the Texas or federal constitution.

**SECTION 1.08. GENERAL POWERS.** (a) The authority has all of the powers, rights, and privileges necessary to manage, conserve, preserve, and protect the aquifer and to increase the recharge of, and prevent the waste or pollution of water in, the aquifer. The authority has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapters 50, 51, and 52, Water Code, applicable to an authority created under Article XVI, Section 59, of the Texas Constitution. This article prevails over any provision of general law that is in conflict or inconsistent with this article regarding the area of the authority's jurisdiction.

(b) The authority's powers regarding underground water apply only to underground water within or withdrawn from the aquifer. This subsection is not intended to allow the authority to regulate surface water.

(c) The authority and local governments with pollution control powers provided under Subchapters D and E, Chapter 26, Water Code, in order to prevent pollution and enforce water quality standards in the counties included within the authority's boundaries and within a buffer zone that includes all of the area less than five miles outside of those counties, shall apply pollution control regulations equally and uniformly throughout the area within the counties and the buffer zone. The buffer zone does not include the territory within a water management district created under Chapter 654, Acts of the 71st Legislature, Regular Session, 1989.

**SECTION 1.09. BOARD OF DIRECTORS.** (a) The authority is governed by a board of nine directors.

(b) The board consists of:

(1) a member appointed by the South Central Texas Water Advisory Committee created by this Act;

(2) three residents of Bexar County, with two residents appointed by the governing body of the city of San Antonio and one resident appointed by the Commissioners Court of Bexar County to represent cities and communities in the county other than the city of San Antonio;

(3) one resident of Comal County or the city of New Braunfels appointed by the Commissioners Court of Comal County;

(4) one resident of Hays County appointed by the governing body of the city of San Marcos;

(5) one resident of Medina County appointed by the governing body of the Medina Underground Water Conservation District;

(6) one resident of Uvalde County appointed by the governing body of the Uvalde Underground Water Conservation District; and

(7) one person appointed in rotation who is from Atascosa, Medina, or Uvalde counties, with that person appointed by the governing body of the Evergreen Underground Water District, by the Medina Underground Water Conservation District, or by the Uvalde County Underground Water Conservation District, with the person appointed by the Evergreen Underground Water District serving the first term, followed by a person appointed by the Medina Underground Water Conservation District to serve the second term, followed by a person appointed by the Uvalde County Underground Water Conservation District to serve the third term, and rotating in that order of appointment for subsequent terms.

(c) The Commissioners Court of Bexar County and the governing body of the city of San Antonio shall make appointments under Subsection (b) of this section that accurately reflect the ethnic composition of the population of Bexar County.

(d) The initial directors of the board shall draw lots to determine their terms. Four initial directors serve terms that expire June 1, 1995. Five initial directors serve terms that expire June 1, 1997. Subsequent directors shall be appointed to serve staggered four-year terms, the appropriate number of which expire June 1 of each odd-numbered year.

(e) At the initial meeting of the board, the members shall select one member to serve as presiding officer. The presiding officer serves a term set by rule of the board not to exceed four years. An act of the board is not valid unless adopted by the affirmative vote of a majority of the members of the board.

(f) A board member receives no compensation for service on the board but is entitled to reimbursement for actual and necessary expenses incurred in the performance of the member's duties.

(g) A board member shall hold office until a successor has been selected and approved and has qualified by taking the oath of office.

(h) If a vacancy on the board occurs, the governing body that appointed the vacating member shall appoint another person having the same qualifications required of the vacating member to serve the unexpired portion of the vacating member's term.

**SECTION 1.10. SOUTH CENTRAL TEXAS WATER ADVISORY COMMITTEE.** (a) The South Central Texas Water Advisory Committee shall advise the board on downstream water rights and issues. The advisory committee consists of one member appointed by the governing body of each of the following counties and municipalities, except that Atascosa County may not have a representative on the advisory committee when the county has a representative member on the board:

- (1) Atascosa;
- (2) Caldwell;
- (3) Calhoun;
- (4) Comal;
- (5) DeWitt;
- (6) Goliad;
- (7) Gonzales;
- (8) Guadalupe;
- (9) Hays;
- (10) Karnes;
- (11) Medina;
- (12) Nueces;
- (13) Refugio;
- (14) San Patricio;
- (15) Uvalde;
- (16) Victoria;
- (17) Wilson;



- (18) the City of San Antonio;
- (19) the City of Victoria; and
- (20) the City of Corpus Christi.

(b) A member must be a resident or qualified voter of or engaged in business in a county all or part of which is included in the member's area of representation.

(c) The reimbursement of an advisory committee member for expenses is on the same terms as the reimbursement of board members. An advisory committee member is not entitled to compensation.

(d) An advisory committee member holds office until a successor is appointed.

(e) The authority shall send to each advisory committee member all the communications of the authority that are extended to board members and may participate in board meetings to represent downstream water supply concerns and assist in solutions to those concerns. Advisory committee members may not vote on a board decision.

(f) The advisory committee by resolution may request the board to reconsider any board action that is considered prejudicial to downstream water interests. If the board review does not result in a resolution satisfactory to the advisory committee, the advisory committee by resolution may request the commission to review the action. The commission shall review the action and may make a recommendation to the board. If the board determines that the board's action is contrary to an action of the commission affecting downstream interests, the board shall reverse itself.

(g) The advisory committee shall meet to organize and elect a presiding officer.

(h) The presiding officer of the advisory committee shall submit a report assessing the effectiveness of the authority to the commission and the authority by March 31 of each even-numbered year. The report must assess the effect on downstream water rights of the management of the aquifer. The authority shall consider the report in managing the authority's affairs.

(i) The advisory committee's duties include:

- (1) assisting the authority in developing the authority's demand management plan for the county that the representative represents;
- (2) assisting the authority to implement the demand management plan; and
- (3) performing other duties requested by the board that the representative may practically perform.

**SECTION 1.11. GENERAL POWERS AND DUTIES OF THE BOARD AND AUTHORITY.** (a) The board shall adopt rules necessary to carry out the authority's powers and duties under this article, including rules governing procedures of the board and authority.

(b) The authority shall ensure compliance with permitting, metering, and reporting requirements and shall regulate permits.

(c) The authority may issue orders to enforce this article or its rules.

(d) The authority may:

- (1) issue or administer grants, loans, or other financial assistance to water users for water conservation and water reuse;
- (2) enter into contracts;
- (3) sue and be sued in its own name;
- (4) receive gifts, grants, awards, and loans for use in carrying out its powers and duties;
- (5) hire an executive director to be the chief administrator of the authority and other employees as necessary to carry out its powers and duties;
- (6) delegate the power to hire employees to the executive director of the authority;
- (7) own real and personal property;
- (8) close abandoned, wasteful, or dangerous wells;
- (9) hold permits under state law or under federal law pertaining to the Endangered Species Act of 1973 (16 U.S.C. Section 1531 et seq.) and its amendments;

(10) enforce Chapter 32, Water Code, and commission rules adopted under that Act within the authority's boundaries; and

(11) require to be furnished to the authority water well drillers' logs that are required by Chapter 32, Water Code, to be kept and furnished to the commission.

(e) The authority shall make a good faith effort to award to minority-owned and women-owned businesses contracts issued under the powers and duties granted under this section in the amount of 20 percent of the total amount of those contracts. Not later than October 31 of every even-numbered year, the authority shall file with the governor and each house of the legislature a written report containing the following information for the previous two years for all businesses, for minority-owned and women-owned businesses classified by minority group and within each minority group classification, by gender, the total number of contracts issued by the authority; the total dollar amount of those contracts; and the total number of businesses submitting bids or proposals relating to such contracts and to the purpose of such contracts. In this subsection:

(1) "Minority-owned business" means a business entity at least 51 percent of which is owned by members of a minority group or, in the case of a corporation, at least 51 percent of the shares of which are owned by members of a minority group, and that is managed and controlled by members of a minority group in its daily operations.

(2) "Minority group" includes:

- (A) African Americans;
- (B) American Indians;
- (C) Asian Americans; and
- (D) Mexican Americans and other Americans of Hispanic origin.

(3) "Women-owned business" means a business entity at least 51 percent of which is owned by women or, in the case of a corporation, at least 51 percent of the shares of which are owned by women, and that is managed and controlled by women in its daily operations.

(f) The authority may contract with a person who uses water from the aquifer for the authority or that person to construct, operate, own, finance, and maintain water supply facilities. Management fees or special fees may not be used for purchasing or operating these facilities. For the purpose of this subsection, "water supply facility" includes a dam, reservoir, treatment facility, transmission facility, or recharge project.

(g) The authority has the power of eminent domain. The authority may not acquire rights to underground water by the power of eminent domain.

(h) The authority is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

**SECTION 1.12. SUNSET COMMISSION REVIEW.** (a) The board is subject to review under Chapter 325, Government Code (Texas Sunset Act), but may not be abolished under that Act. The review shall be conducted as if the board were scheduled to be abolished September 1, 2005.

(b) Unless members of the board are continued in office after the review, their membership expires September 1, 2005.

(c) When the membership of the board of directors expires under Subsection (b) of this section, a new board of directors shall be appointed as provided by this article, with each new member serving for the unexpired term of the member's predecessor. A member whose membership has expired under Subsection (b) is not eligible for reappointment under this subsection.

**SECTION 1.13. REUSE AUTHORIZED.** Any regulation of the withdrawal of water from the aquifer must allow for credit to be given for certified reuse of the water. For regulatory credit, the authority or a local underground water conservation district must certify:

- (1) the lawful use and reuse of aquifer water;

- (2) the amount of aquifer water to be used; and
- (3) the amount of aquifer withdrawals replaced by reuse.

**SECTION 1.14. WITHDRAWALS.** (a) Authorizations to withdraw water from the aquifer and all authorizations and rights to make a withdrawal under this Act shall be limited in accordance with this section to:

- (1) protect the water quality of the aquifer;
- (2) protect the water quality of the surface streams to which the aquifer provides springflow;
- (3) achieve water conservation;
- (4) maximize the beneficial use of water available for withdrawal from the aquifer;
- (5) protect aquatic and wildlife habitat;
- (6) protect species that are designated as threatened or endangered under applicable federal or state law; and
- (7) provide for instream uses, bays, and estuaries.

(b) Except as provided by Subsections (d), (f), and (h) of this section and Section 1.26 of this article, for the period ending December 31, 2007, the amount of permitted withdrawals from the aquifer may not exceed 450,000 acre-feet of water for each calendar year.

(c) Except as provided by Subsections (d), (f), and (h) of this section and Section 1.26 of this article, for the period beginning January 1, 2008, the amount of permitted withdrawals from the aquifer may not exceed 400,000 acre-feet of water for each calendar year.

(d) If, through studies and implementation of water management strategies, including conservation, springflow augmentation, diversions downstream of the springs, reuse, supplemental recharge, conjunctive management of surface and subsurface water, and drought management plans, the authority determines that additional supplies are available from the aquifer, the authority, in consultation with appropriate state and federal agencies, may review and may increase the maximum amount of withdrawals provided by this section and set a different maximum amount of withdrawals.

(e) The authority may not allow withdrawals from the aquifer through wells drilled after June 1, 1993, except additional water as provided by Subsection (d) and then on an interruptible basis.

(f) If the level of the aquifer is equal to or greater than 650 feet above mean sea level as measured at Well J-17, the authority may authorize withdrawal from the San Antonio pool, on an uninterruptible basis, of permitted amounts. If the level of the aquifer is equal to or greater than 845 feet at Well J-27, the authority may authorize withdrawal from the Uvalde pool, on an uninterruptible basis, of permitted amounts. The authority shall limit the additional withdrawals to ensure that springflows are not affected during critical drought conditions.

(g) The authority by rule may define other pools within the aquifer, in accordance with hydrogeologic research, and may establish index wells for any pool to monitor the level of the aquifer to aid the regulation of withdrawals from the pools.

(h) To accomplish the purposes of this article, by June 1, 1994, the authority, through a program, shall implement and enforce water management practices, procedures, and methods to ensure that, not later than December 31, 2012, the continuous minimum springflows of the Comal Springs and the San Marcos Springs are maintained to protect endangered and threatened species to the extent required by federal law. The authority from time to time as appropriate may revise the practices, procedures, and methods. To meet this requirement, the authority shall require:

- (1) phased reductions in the amount of water that may be used or withdrawn by existing users or categories of other users; or
- (2) implementation of alternative management practices, procedures, and methods.

**SECTION 1.15. PERMIT REQUIRED.** (a) The authority shall manage withdrawals from the aquifer and shall manage all withdrawal points from the aquifer as provided by this Act.

(b) Except as provided by Sections 1.17 and 1.33 of this article, a person may not withdraw water from the aquifer or begin construction of a well or other works designed for the withdrawal of water from the aquifer without obtaining a permit from the authority.

(c) The authority may issue regular permits, term permits, and emergency permits.

(d) Each permit must specify the maximum rate and total volume of water that the water user may withdraw in a calendar year.

**SECTION 1.16. DECLARATIONS OF HISTORICAL USE; INITIAL REGULAR PERMITS.** (a) An existing user may apply for an initial regular permit by filing a declaration of historical use of underground water withdrawn from the aquifer during the historical period from June 1, 1972, through May 31, 1993.

(b) An existing user's declaration of historical use must be filed on or before March 1, 1994, on a form prescribed by the board. An applicant for a permit must timely pay all application fees required by the board. An owner of a well used for irrigation must include additional documentation of the number of acres irrigated during the historical period provided by Subsection (a) of this section.

(c) An owner of a well from which the water will be used exclusively for domestic use or watering livestock and that is exempt under Section 1.33 of this article is not required to file a declaration of historical use.

(d) The board shall grant an initial regular permit to an existing user who:

(1) files a declaration and pays fees as required by this section; and

(2) establishes by convincing evidence beneficial use of underground water from the aquifer.

(e) To the extent water is available for permitting, the board shall issue the existing user a permit for withdrawal of an amount of water equal to the user's maximum beneficial use of water without waste during any one calendar year of the historical period. If a water user does not have historical use for a full year, then the authority shall issue a permit for withdrawal based on an amount of water that would normally be beneficially used without waste for the intended purpose for a calendar year. If the total amount of water determined to have been beneficially used without waste under this subsection exceeds the amount of water available for permitting, the authority shall adjust the amount of water authorized for withdrawal under the permits proportionately to meet the amount available for permitting. An existing irrigation user shall receive a permit for not less than two acre-feet a year for each acre of land the user actually irrigated in any one calendar year during the historical period. An existing user who has operated a well for three or more years during the historical period shall receive a permit for at least the average amount of water withdrawn annually during the historical period.

(f) The board by rule shall consider the equitable treatment of a person whose historic use has been affected by a requirement of or participation in a federal program.

(g) The authority shall issue an initial regular permit without a term, and an initial regular permit remains in effect until the permit is abandoned, cancelled, or retired.

(h) The board shall notify each permit holder that the permit is subject to limitations as provided by this article.

**SECTION 1.17. INTERIM AUTHORIZATION.** (a) A person who, on the effective date of this article, owns a producing well that withdraws water from the aquifer may continue to withdraw and beneficially use water without waste until final action on permits by the authority, if:

(1) the well is in compliance with all statutes and rules relating to well construction, approval, location, spacing, and operation; and

(2) by March 1, 1994, the person files a declaration of historical use on a form as required by the authority.

(b) Use under interim authorization may not exceed on an annual basis the historical, maximum, beneficial use of water without waste during any one calendar year as evidenced by the person's declaration of historical use calculated in accordance with Subsection (e) of Section 1.16 of this article, unless that amount is otherwise determined by the authority.

(c) Use under this section is subject to the authority's comprehensive management plan and rules adopted by the authority.

(d) Interim authorization for a well under this section ends on:

(1) entry of a final and appealable order by the authority acting on the application for the well; or

(2) March 1, 1994, if the well owner has not filed a declaration of historical use.

**SECTION 1.18. ADDITIONAL REGULAR PERMITS.** (a) To the extent water is available for permitting after the issuance of permits to existing users, the authority may issue additional regular permits, subject to limits on the total amount of permitted withdrawals determined under Section 1.14 of this article.

(b) The authority may not consider or take action on an application relating to a proposed or existing well of which there is no evidence of actual beneficial use before June 1, 1993, until a final determination has been made on all initial regular permit applications submitted on or before the initial application date of March 1, 1994.

**SECTION 1.19. TERM PERMITS.** (a) The authority may issue interruptible term permits for withdrawal for any period the authority considers feasible, but may not issue a term permit for a period of more than 10 years.

(b) A holder of a term permit may not withdraw water from the San Antonio pool of the aquifer unless the level of the aquifer is higher than 665 feet above sea level, as measured at Well J-17.

(c) A holder of a term permit may not withdraw water from the Uvalde pool of the aquifer unless the level of the aquifer is higher than 865 feet above sea level, as measured at Well J-27.

**SECTION 1.20. EMERGENCY PERMITS.** (a) Emergency permits may be issued only to prevent the loss of life or to prevent severe, imminent threats to the public health or safety.

(b) The term of an emergency permit may not exceed 30 days, unless renewed.

(c) The board may renew an emergency permit.

(d) The holder of an emergency permit may withdraw water from the aquifer without regard to its effect on other permit holders.

**SECTION 1.21. PERMIT RETIREMENT.** (a) The authority shall prepare and implement a plan for reducing, by January 1, 2008, the maximum annual volume of water authorized to be withdrawn from the aquifer under regular permits to 400,000 acre-feet a year or the adjusted amount determined under Subsection (d) of Section 1.14 of this article.

(b) The plan must be enforceable and must include water conservation and reuse measures, measures to retire water rights, and other water management measures designed to achieve the reduction levels or appropriate management of the resource.

(c) If, on or after January 1, 2008, the overall volume of water authorized to be withdrawn from the aquifer under regular permits is greater than 400,000 acre-feet a year or greater than the adjusted amount determined under Subsection (d) of Section 1.14 of this article, the maximum authorized withdrawal of each regular permit shall be immediately reduced by an equal percentage as is necessary to reduce overall maximum demand to 400,000 acre-feet a year or the adjusted amount, as appropriate. The amount reduced may be restored, in whole or in part, as other appropriate measures are implemented that maintain overall demand at or below the appropriate amount.

**SECTION 1.22. ACQUISITION OF RIGHTS.** (a) The authority may acquire permitted rights to use water from the aquifer for the purposes of:

(1) holding those rights in trust for sale or transfer of the water or the rights to persons within the authority's jurisdiction who may use water from the aquifer;

(2) holding those rights in trust as a means of managing overall demand on the aquifer;

(3) holding those rights for resale or retirement as a means of complying with pumping reduction requirements under this article; or

(4) retiring those rights, including those rights already permitted.

(b) The authority may acquire and hold permits or rights to appropriate surface water or groundwater from sources inside or outside of the authority's boundaries.

(c) Notwithstanding any other provisions of law, the authority's acquisition of permitted rights to use water from the aquifer is eligible for financial assistance from:

- (1) the water supply account of the Texas Water Development Fund under Subchapter D, Chapter 17, Water Code;
- (2) the water loan assistance fund under Subchapter C, Chapter 15, Water Code; and
- (3) the revenue bond program under Subchapter I, Chapter 17, Water Code.

**SECTION 1.23. CONSERVATION AND REUSE PLANS.** (a) The authority may require holders of regular permits and holders of term permits to submit water conservation plans and, if appropriate, reuse plans for review and approval by the authority. The board by rule shall require a plan to be implemented after a reasonable time after a plan's approval.

(b) The board shall assist users in developing conservation or reuse plans.

(c) The authority biennially shall prepare and update enforceable and effective conservation and reuse plans as required by this article. Not later than January 1 of each odd-numbered year the authority shall submit the plan to the legislature.

**SECTION 1.24. LOANS AND GRANTS.** (a) Notwithstanding any other provision of law, the authority is eligible as a lender district to receive loans from the Texas Water Development Board under the agricultural water conservation bond program under Subchapter J, Chapter 17, Water Code.

(b) The authority may apply for, request, solicit, contract for, receive, and accept gifts, grants, and other assistance from any source for the purposes of this article.

(c) The authority may issue grants or make loans to finance the purchase or installation of equipment or facilities. If the authority issues a grant for a water conservation, reuse, or water management project, the authority may require the beneficiary to transfer to the authority permitted rights to aquifer water equal to a portion of the water conserved or made available by the project.

**SECTION 1.25. COMPREHENSIVE MANAGEMENT PLAN.** (a) Consistent with Section 1.14 of this article, the authority shall develop, by September 1, 1995, and implement a comprehensive water management plan that includes conservation, future supply, and demand management plans. The authority may not delegate the development of the plan under Section 1.42 of this article.

(b) The authority, in conjunction with the South Central Texas Water Advisory Committee, the Texas Water Development Board, and underground water conservation districts within the authority's boundaries, shall develop a 20-year plan for providing alternative supplies of water to the region, with five-year goals and objectives, to be implemented by the authority and reviewed annually by the appropriate state agencies and the Edwards Aquifer Legislative Oversight Committee. The authority, advisory committee, Texas Water Development Board, and districts, in developing the plan, shall:

- (1) thoroughly investigate all alternative technologies;
- (2) investigate mechanisms for providing financial assistance for alternative supplies through the Texas Water Development Board; and
- (3) perform a cost-benefit analysis and an environmental analysis.

**SECTION 1.26. CRITICAL PERIOD MANAGEMENT PLAN.** The authority shall prepare and coordinate implementation of a plan for critical period management on or before September 1, 1995. The mechanisms must:

- (1) distinguish between discretionary use and nondiscretionary use;
- (2) require reductions of all discretionary use to the maximum extent feasible;
- (3) require utility pricing, to the maximum extent feasible, to limit discretionary use by the customers of water utilities; and
- (4) require reduction of nondiscretionary use by permitted or contractual users, to the extent further reductions are necessary, in the reverse order of the following water use preferences:

- (A) municipal, domestic, and livestock;
- (B) industrial and crop irrigation;
- (C) residential landscape irrigation;
- (D) recreational and pleasure; and
- (E) other uses that are authorized by law.

SECTION 1.27. RESEARCH. (a) The authority shall complete research on the technological feasibility of springflow enhancement and yield enhancement that, immediately before September 1, 1993, is being conducted by the Edwards Underground Water District.

(b) The authority may conduct research to:

- (1) augment the springflow, enhance the recharge, and enhance the yield of the aquifer;
- (2) monitor and protect water quality;
- (3) manage water resources, including water conservation, water use and reuse, and drought management measures; and
- (4) develop alternative supplies of water for users.

(c) The authority may schedule demonstration projects for purposes of Subsection (b)(1) of this section.

(d) The authority may contract with other persons to conduct research.

SECTION 1.28. TAX; BONDS. (a) The authority may not levy a property tax.

(b) The authority may issue revenue bonds to finance the purchase of land or the purchase, construction, or installation of facilities or equipment. The authority may not allow for any person to construct, acquire, or own facilities for transporting groundwater out of Uvalde County or Medina County.

(c) Bonds issued by the authority are subject to review and approval of the attorney general and the commission. If the attorney general finds that the bonds have been authorized in accordance with the law, the attorney general shall approve them, and the comptroller of public accounts shall register the bonds. Following approval and registration, the bonds are incontestable and are binding obligations according to their terms.

(d) The authority board may organize proceeds of the bonds into funds and accounts and may invest the proceeds as the authority board determines is appropriate.

SECTION 1.29. FEES. (a) The cost of reducing withdrawals or permit retirements must be borne:

(1) solely by users of the aquifer for reducing withdrawals from the level on the effective date of this article to 450,000 acre-feet a year, or the adjusted amount determined under Subsection (d) of Section 1.14 of this article for the period ending December 31, 2007; and

(2) equally by aquifer users and downstream water rights holders for permit retirements from 450,000 acre-feet a year, or the adjusted amount determined under Subsection (d) of Section 1.14 of this article for the period ending December 31, 2007, to 400,000 acre-feet a year, or the adjusted amount determined under Subsection (d) of Section 1.14 of this article, for the period beginning January 1, 2008.

(b) The authority shall assess equitable aquifer management fees based on aquifer use under the water management plan to finance its administrative expenses and programs authorized under this article. Each water district governed by Chapter 52, Water Code, that is within the authority's boundaries may contract with the authority to pay expenses of the authority through taxes in lieu of user fees to be paid by water users in the district. The contract must provide that the district will pay an amount equal to the amount that the water users in the district would have paid through user fees. The authority may not collect a total amount of fees and taxes that is more than is reasonably necessary for the administration of the authority.

(c) The authority shall also assess an equitable special fee based on permitted aquifer water rights to be used only to finance the retirement of rights necessary to meet the goals provided by Section 1.21 of this article. The authority shall set the equitable special fees on permitted aquifer users at a level sufficient to match the funds raised from the assessment of equitable special fees on downstream water rights holders.

(d) The commission shall assess equitable special fees on all downstream water rights holders in the Guadalupe River Basin to be used solely to finance the retirement of aquifer rights necessary to meet the goals provided by Section 1.21 of this article. Fees assessed under this subsection may not exceed one-half of the cost of permit retirements from 450,000 acre-feet a year, or the adjusted amount determined under Subsection (d) of Section 1.14 of this article, for the period ending December 31, 2007, to 400,000 acre-feet a year for the period beginning January 1, 2008. The authority shall report to the commission the estimated costs of the retirements. The amount of fees assessed under this subsection shall be determined in accordance with rules adopted by the commission for fees under the South Texas watermaster program with adjustments as necessary to ensure that fees are equitable between users, including priority and nonpriority hydroelectric users. A downstream water rights holder shall pay fees assessed under this subsection to the authority. A fee may not be assessed by the commission under this subsection on contractual deliveries of water stored in Canyon Lake that may be diverted downstream of the San Marcos Springs or Canyon Dam. A person or entity making a contractual sale of water stored upstream of Canyon Dam may not establish a systemwide rate that requires purchasers of upstream-stored water to pay the special fee assessed under this subsection.

(e) In developing an equitable fee structure under this section, the authority may establish different fee rates on a per acre-foot basis for different types of use. The fees must be equitable between types of uses. The fee rate for agricultural use shall be based on the volume of water withdrawn and may not be more than 20 percent of the fee rate for municipal use. The authority shall assess the fees on the amount of water a permit holder is authorized to withdraw under the permit.

(f) The authority shall impose a permit application fee not to exceed \$25.

(g) The authority may impose a registration application fee not to exceed \$10.

(h) Special fees collected under Subsection (c) or (d) of this section may not be used to finance a surface water supply reservoir project.

(i) The authority shall provide money as necessary, but not to exceed five percent of the money collected under Subsection (d) of this section, to finance the South Central Texas Water Advisory Committee's administrative expenses and programs authorized under this article.

**SECTION 1.30. RIVER DIVERSIONS.** (a) The commission may issue to an applicant a special permit to divert water from the Guadalupe River from a diversion point on the river downstream of the point where the river emerges as a spring.

(b) A permit issued to a person under this section must condition the diversion of water from the Guadalupe River on a limitation of withdrawals under the person's permit to withdraw water from the aquifer.

(c) A permit issued under this section must provide that the permit holder may divert water from the Guadalupe River only if:

(1) the diversion is made instead of a withdrawal from the aquifer to enhance the yield of the aquifer; and

(2) the diversion does not impair senior water rights or vested riparian rights.

(d) A permit issued in accordance with this section is subordinate to permitted water rights for which applications were submitted before May 31, 1993, and vested riparian rights.

(e) Sections 11.028 and 11.033, Water Code, do not apply to a permit issued under this section.

**SECTION 1.31. MEASURING DEVICES.** (a) The owner of a nonexempt well that withdraws water from the aquifer shall install and maintain a measuring device approved by the authority designed to indicate the flow rate and cumulative amount of water withdrawn by that well. This requirement may be waived by the authority on written request by a well owner to use an alternative method of determining the amount of water withdrawn.

(b) The authority is responsible for the costs of purchasing, installing, and maintaining measuring devices, if required, for an irrigation well in existence on September 1, 1993.



**SECTION 1.32. REPORTS.** Not later than March 1 of each year, and on a form prescribed by the authority, each holder of a permit shall file with the authority a written report of water use for the preceding calendar year.

**SECTION 1.33. WELL METERING EXEMPTION.** (a) A well that produces 25,000 gallons of water a day or less for domestic or livestock use is exempt from metering requirements.

(b) Exempt wells must register with the authority or with an underground water conservation district in which the well is located.

(c) A well within or serving a subdivision requiring platting does not qualify for an exempt use.

**SECTION 1.34. TRANSFER OF RIGHTS.** (a) Water withdrawn from the aquifer must be used within the boundaries of the authority.

(b) The authority by rule may establish a procedure by which a person who installs water conservation equipment may sell the water conserved.

(c) A permit holder may lease permitted water rights, but a holder of a permit for irrigation use may not lease more than 50 percent of the irrigation rights initially permitted. The user's remaining irrigation water rights must be used in accordance with the original permit and must pass with transfer of the irrigated land.

**SECTION 1.35. PROHIBITIONS.** (a) A person may not withdraw water from the aquifer except as authorized by a permit issued by the authority or by this article.

(b) A person holding a permit issued by the authority may not violate the terms or conditions of the permit.

(c) A person may not waste water withdrawn from the aquifer.

(d) A person may not pollute or contribute to the pollution of the aquifer.

(e) A person may not violate this article or a rule of the authority adopted under this article.

**SECTION 1.36. ENFORCEMENT.** (a) The authority may enter orders to enforce the terms and conditions of permits, orders, or rules issued or adopted under this article.

(b) The authority by rule shall provide for the suspension of a permit of any class for a failure to pay a required fee or a violation of a permit condition or order of the authority or a rule adopted by the authority.

**SECTION 1.37. ADMINISTRATIVE PENALTY.** (a) The authority may assess an administrative penalty against a person who violates this article or a rule adopted or order issued under this article in an amount of not less than \$100 or more than \$1,000 for each violation and for each day of a continuing violation.

(b) In determining the amount of the penalty, the authority shall consider:

- (1) the history of previous violations;
- (2) the amount necessary to deter future violations;
- (3) efforts to correct the violation;
- (4) enforcement costs relating to the violation; and
- (5) any other matters that justice may require.

(c) If after an examination of the facts the authority concludes that the person did commit a violation, the authority may issue a preliminary report stating the facts on which it based its conclusion, recommending that an administrative penalty under this section be imposed, and recommending the amount of the proposed penalty.

(d) The authority shall give written notice of the report to the person charged with committing the violation. The notice must include a brief summary of the facts, a statement of the amount of the recommended penalty, and a statement of the person's right to an informal review of the occurrence of the violation, the amount of the penalty, or both.

(e) Not later than the 10th day after the date on which the person charged with committing the violation receives the notice, the person may either give the authority written consent to

the report, including the recommended penalty, or make a written request for an informal review by the authority.

(f) If the person charged with committing the violation consents to the penalty recommended by the authority or fails timely to request an informal review, the authority shall assess the penalty. The authority shall give the person written notice of its action. The person shall pay the penalty not later than the 30th day after the date on which the person receives the notice.

(g) If the person charged with committing a violation requests an informal review as provided by Subsection (e) of this section, the authority shall conduct the review. The authority shall give the person written notice of the results of the review.

(h) Not later than the 10th day after the date on which the person charged with committing the violation receives the notice prescribed by Subsection (g) of this section, the person may make to the authority a written request for a hearing.

(i) If, after informal review, a person who has been ordered to pay a penalty fails to request a formal hearing in a timely manner, the authority shall assess the penalty. The authority shall give the person written notice of its action. The person shall pay the penalty not later than the 30th day after the date on which the person receives the notice.

(j) Within 30 days after the date the authority's order is final as provided by Subsection (c), Section 16, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subdivision (3) of Subsection (j) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty and that is effective until all judicial review of the authority's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the authority by certified mail.

(l) If the authority receives a copy of an affidavit under Subdivision (2) of Subsection (k) of this section, it may file with the court within five days after the date the copy is received a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the authority may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the authority:

(1) is instituted by filing a petition as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes); and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the authority.

(r) All proceedings under this section are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

**SECTION 1.38. INJUNCTION BY AUTHORITY.** The authority may file a civil suit in a state district court for an injunction to enforce this article. The authority may recover reasonable attorney fees in a suit under this section.

**SECTION 1.39. SUIT FOR MANDAMUS.** The commission may file a civil suit for an order of mandamus against the authority to compel the authority to perform its duties under this article or to compel the authority to enforce this article against a violator. The commission may recover attorney fees from the authority in a suit under this section.

**SECTION 1.40. CIVIL PENALTY.** (a) The commission or authority may file a civil action in state district court for a civil penalty for a violation of this article or a rule adopted or permit or order issued under this article.

(b) The commission or authority may recover a civil penalty of not less than \$100 or more than \$10,000 for each violation and for each day of violation and attorney fees.

(c) A civil penalty or attorney fees collected by the authority under this section shall be paid to the authority.

(d) A civil penalty or attorney fees collected by the commission under this section shall be deposited to the credit of the general revenue fund.

**SECTION 1.41. REPEALER; TRANSFERS; RULES.** (a) Chapter 99, Acts of the 56th Legislature, Regular Session, 1959 (Article 8280-219, Vernon's Texas Civil Statutes), is repealed, and the Edwards Underground Water District is abolished.

(b) All files and records of the Edwards Underground Water District pertaining to control, management, and operation of the district are transferred from the Edwards Underground Water District to the authority on the effective date of this article.

(c) All real and personal property, leases, rights, contracts, staff, and obligations of the Edwards Underground Water District are transferred to the authority on the effective date of this article.

(d) On September 1, 1993, all unobligated and unexpended funds of the Edwards Underground Water District shall be transferred to the authority.

(e) A rule adopted by the Edwards Underground Water District before the effective date of this article that relates to management or control of the aquifer is, on the effective date of this article, a rule of the authority and remains in effect until amended or repealed by the authority.

(f) The authority shall be automatically substituted for the Edwards Underground Water District in any judicial or administrative proceeding to which, on the effective date of this article, the Edwards Underground Water District is a party.

**SECTION 1.42. EFFECT ON OTHER DISTRICTS.** (a) An underground water conservation district other than the authority may manage and control water that is a part of the aquifer after the effective date of this article only as provided in this section. This article

does not affect a water reclamation or conservation district that manages and controls only water from a resource other than the aquifer.

(b) An underground water conservation district other than the authority may manage and control water that is a part of the aquifer to the extent that those management activities do not conflict with and are not duplicative of this article or the rules and orders of the authority.

(c) Except as otherwise provided by this article, the board may delegate the powers and duties granted to it under this article. The board shall delegate all or part of its powers or duties to an underground water conservation district on the district's request if the district demonstrates to the satisfaction of the board that:

(1) the district has statutory powers necessary for full enforcement of the rules and orders to be delegated;

(2) the district has implemented all rules and policies necessary to fully implement the programs to be delegated; and

(3) the district has implemented a system designed to provide the authority with adequate information with which to monitor the adequacy of the district's performance in enforcing board rules and orders.

(d) In making the determination under Subsection (c) of this section, the board may consider the district's past performance and experience in enforcing powers and duties delegated to it by the board. The board may deny a request for delegation of powers or duties by a district if the district has previously had a delegation terminated under Subsection (e) of this section.

(e) If the authority determines that a district has failed adequately to enforce or implement any rules or orders delegated under this section, the authority immediately shall provide to the district notice that sets forth the reasons for its determination and the actions that the district must take to retain the delegated authority. Not later than the 10th day after the date the notice is given, the district must demonstrate its commitment and ability to take the actions set forth in the notice. If, at the end of the 10-day period, the authority does not find that the district will adequately enforce its rules and orders, the authority immediately shall resume full responsibility for implementation and enforcement of those rules and orders. The authority shall provide to the district notice that the delegation of authority to it has been terminated. After the termination notice is given, the authority of the district to manage or control water in the aquifer is limited to the authority granted by Subsection (b) of this section.

**SECTION 1.43. CREATION OF UNDERGROUND WATER CONSERVATION DISTRICT.** An underground water conservation district may be created in any county affected by this article as provided by Subchapter B, Chapter 52, Water Code.

**SECTION 1.44. COOPERATIVE CONTRACTS FOR ARTIFICIAL RECHARGE.** (a) The authority may contract with any political subdivision of the state under Chapter 791, Government Code, to provide for artificial recharge of the aquifer, through injection wells or with surface water subject to the control of the political subdivision, for the subsequent retrieval of the water by the political subdivision or its authorized assignees for beneficial use within the authority.

(b) The authority may not unreasonably deny a request to enter into a cooperative contract under this section if the political subdivision agrees to:

(1) file with the authority records of the injection or artificial recharge of the aquifer; and

(2) provide for protection of the quality of the aquifer water and of the rights of aquifer users in designating the location of injection wells or recharge dams, the methods of injection or recharge, and the location and type of retrieval wells.

(c) The political subdivision causing artificial recharge of the aquifer is entitled to withdraw during any 12-month period the measured amount of water actually injected or artificially recharged during the preceding 12-month period, as demonstrated and established by expert testimony, less an amount determined by the authority to:

(1) account for that part of the artificially recharged water discharged through springs; and

(2) compensate the authority in lieu of users' fees.

(d) The amounts of water withdrawn under this section are not subject to the maximum total permitted withdrawals provided by Section 1.14 of this article.

**SECTION 1.45. RECHARGE DAMS.** (a) The authority may build or operate recharge dams in the recharge area of the aquifer if the recharge is made to increase the yield of the aquifer and the recharge project does not impair senior water rights or vested riparian rights.

(b) The commission shall determine the historic yield of the floodwater to the Nueces River basin. The historic yield is equal to the lesser of:

(1) the average annual yield for the period from 1950 to 1987; or

(2) the annual yield for 1987.

(c) Only the amount of floodwater in excess of the historic yield as determined by the commission may be impounded by a recharge dam built or operated under this section.

## ARTICLE 2

**SECTION 2.01. DEFINITION.** In this article, "district" means the Uvalde County Underground Water Conservation District.

**SECTION 2.02. VALIDATION.** The creation of the district and all resolutions, orders, and other acts or attempted acts of the board of directors of the district are validated in all respects. The creation of the district and all resolutions, orders, and other acts or attempted acts of the board of directors of the district are valid as though they originally had been legally authorized or accomplished.

**SECTION 2.03. BOUNDARIES.** Pursuant to the petition to the Commissioners Court of Uvalde County, Texas, requesting the creation of the district, the district includes the territory contained within the boundaries of Uvalde County.

**SECTION 2.04. FINDING OF BENEFIT.** All the land and other property included within the boundaries of the district will be benefitted by the validation of the district.

**SECTION 2.05. POWERS.** (a) The district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of the state, including Chapters 50 and 52, Water Code, applicable to underground water conservation districts created under Article XVI, Section 59, of the Texas Constitution. This article prevails over any provision of general law that is in conflict or inconsistent with this article.

(b) The district may develop and implement a drought response plan, with reasonable rules, using water levels as observed in the Uvalde Index Well YP-69-50-302.

(c) The rights, powers, privileges, authority, functions, and duties of the district are subject to the continuing right of supervision of the state to be exercised by and through the Texas Water Commission.

**SECTION 2.06. LEVY OF TAXES.** The levy and collection of taxes by the district are governed by Subchapter H, Chapter 52, Water Code, except that the district may not levy a maintenance and operating tax at a rate that exceeds two cents per \$100 assessed valuation unless an election held in the district authorizes a higher rate.

**SECTION 2.07. PENDING LITIGATION.** This article does not apply to or affect litigation pending on the effective date of this article in any court of competent jurisdiction in this state to which the district is a party.

## ARTICLE 3

**SECTION 3.01. LEGISLATIVE OVERSIGHT.** (a) The Edwards Aquifer Legislative Oversight Committee is composed of:

(1) three members of the senate appointed by the lieutenant governor; and

(2) three members of the house of representatives appointed by the speaker of the house of representatives.

(b) The committee shall examine and report to the legislature on the effectiveness of the state and local governmental entities in meeting the purposes of the Edwards Aquifer Authority.

(c) The board shall continually oversee and review:

- (1) the activities of the Edwards Aquifer Authority and the implementation of that authority's enabling legislation;
- (2) the activities of the South Central Texas Water Advisory Committee;
- (3) compliance with federal law relating to threatened or endangered species related to management of underground or surface water in the Edwards Aquifer region;
- (4) water pollution control activities in the Edwards Aquifer region; and
- (5) the activities of soil and water conservation districts and river authorities in the Edwards Aquifer district that affect the management of the aquifer.

SECTION 3.02. NOTICE OF AVAILABLE WATER. The Texas Natural Resource Conservation Commission shall notify the Edwards Aquifer Authority of any water available for appropriation in the Guadalupe-Blanco River Basin as the commission discovers the available water.

SECTION 3.03. SUNSET COMMISSION REVIEW OF GUADALUPE-BLANCO RIVER AUTHORITY. (a) The board of directors of the Guadalupe-Blanco River Authority is subject to review under Chapter 325, Government Code (Texas Sunset Act), but may not be abolished under that Act. The review shall be conducted as if the board of directors were scheduled to be abolished September 1, 1995.

(b) Unless after the review the legislature continues the members of the board of directors in office, the terms of the board members expire September 1, 1995.

(c) If the terms of the board of directors expire under Subsection (b) of this section, a new board of directors shall be appointed and confirmed as provided by Chapter 75, Acts of the 43rd Legislature, 1st Called Session, 1933, with three members appointed to terms expiring February 1, 1997, three to terms expiring February 1, 1999, and three to terms expiring February 1, 2001. A member whose term expires under Subsection (b) of this section is not eligible for reappointment under this subsection.

SECTION 3.04. COOPERATION. All state and local governmental entities are hereby directed to cooperate with the authority to the maximum extent practicable so that the authority can best be able to accomplish the purposes set forth under Article 1. The authority shall, on or before January 1, 1995, submit a report to the governor, lieutenant governor, and speaker of the house of representatives evaluating the extent to which other entities have cooperated with and assisted the authority.

#### ARTICLE 4

SECTION 4.01. FINDINGS RELATED TO PROCEDURAL REQUIREMENTS. (a) The proper and legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished by the constitution and other laws of this state, including the governor, who has submitted the notice and Act to the Texas Water Commission.

(b) The Texas Water Commission has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time.

(c) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 4.02. EFFECTIVE DATES. This Act takes effect September 1, 1993, except Section 1.35 of Article 1 takes effect March 1, 1994.

SECTION 4.03. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on May 11, 1993, by a viva-voce vote; May 25, 1993, Senate refused to concur in House amendments and requested appointment of Conference Commit-

tee; May 27, 1993, House granted request of the Senate; May 30, 1993, Senate adopted Conference Committee Report by a viva-voce vote; passed the House, with amendments, on May 24, 1993, by a non-record vote; May 27, 1993, House granted request of the Senate for appointment of Conference Committee; May 30, 1993, House adopted Conference Committee Report by the following vote: Yeas 116, Nays 22, one present not voting.

Approved June 11, 1993.

Effective Sept. 1, 1993, except § 1.35 effective Mar. 1, 1994.

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## CHAPTER 627

### S.B. No. 95

#### AN ACT

relating to the recruitment of teachers, including assistance in the repayment of student loans for teachers.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Subchapter B, Chapter 11, Education Code, is amended by adding Section 11.37 to read as follows:

*Sec. 11.37. TEACHER RECRUITMENT. (a) The commissioner of education may coordinate and administer a comprehensive program to identify the need for teachers in specific subject areas and geographic regions and to encourage members of minority groups to enter the teaching profession. In coordinating the program, the commissioner shall consider the efforts of existing programs for recruiting minorities into the teaching profession, including those authorized under Section 13.050 of this code. The commissioner shall give priority to implementing this program from the agency's discretionary funds.*

*(b) The commissioner may implement a plan to identify talented secondary school students and to attract them to the teaching profession. In cooperation with the commissioner, the principal of each high school in the state shall appoint a volunteer teacher as the teacher recruiting officer for the school to assist in providing information about the merits of the teaching profession and in identifying and encouraging talented students to become teachers. At least once each school year, the commissioner shall sponsor a meeting in each regional education service center area of the teacher recruiting officers from each high school in that area to provide the officers the opportunity to share information and written materials about the teacher recruitment program.*

*(c) The commissioner shall encourage the business community to cooperate with local schools to develop recruiting programs designed to attract and retain capable teachers. The commissioner shall encourage the business community to provide summer employment opportunities for teachers.*

*(d) The commissioner shall encourage major education associations to cooperate in developing a long-range program promoting teaching as a career and to assist in identifying local activities and resources that may be used to promote the teaching profession.*

*(e) Any funds solicited for or received from any public or private source for this program shall be used exclusively for the implementation of this program.*

SECTION 2. Section 61.701, Education Code, is amended to read as follows:

*Sec. 61.701. REPAYMENT AUTHORIZED. The coordinating board may provide, [using funds appropriated for that purpose and] in accordance with this subchapter and board rules, assistance in the repayment of student loans for teachers who apply and qualify for the assistance.*

SECTION 3. Subsection (b), Section 61.705, Education Code, is amended to read as follows:

*(b) A repayment made under this subchapter may be applied [only] to the principal amount of the loan and to interest that accrues.*